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In re Application of	:	DECISION ON
Fedor Maas	:	
Application No.: 10/596,461	:	
PCT No.: PCT/NL2003/000889	:	
Int. Filing Date: 15 December 2003	:	PETITION UNDER
Priority Date: NA	:	
Attorney's Docket No.: P18140-US1	:	
For: PROVIDING A VALUE...	:	
IN A SECOND NETWORK	:	37 CFR 1.181

This Decision is in response to applicant's "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed on 18 July 2008, requesting the acceptance of the executed declaration form as timely filed since the Notification of Missing Requirements was not received.

BACKGROUND

On 15 March 2003, applicant filed international application PCT/NL2003/000889. The thirty month (30) time period for paying the basic national fee in the United States of America expired at midnight on 15 June 2006.

On 14 June 2006, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration accompanied the transmittal letter.

On 26 January 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905), and indicated that applicant needed to respond within two months from the mailing date or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 14 July 2008, a Notification of Abandonment (Form PCT/DO/EO/905) was mailed to applicant's representative. It stated that no response to 905 dated 1/26/07, therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495 and, is ABANDONED AS TO THE UNITED STATES OF AMERICA.

On 18 July 2008, applicant filed the instant petition accompanied, inter alia, with an executed declaration.

DISCUSSION

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that:

“The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

A review of the petition reveals that petitioner has not compiled with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed for reply. Petitioner's copy of the PAIR record is insufficient to establish failure to receive the Office communication without any corroborating evidence, e.g., a log showing the mailed received during the time period the office communication would have been received and a tickler sheet for 26 March 2007. In other words, to establish a showing nonreceipt of the Notification of Missing Requirements would require, at a copy of the docket report showing all replies docketed for a date of two months from the mail date of the nonreceived Office action.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned-application at this time is not appropriate.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Applicant is required to provide the proper reply stated above within TWO (2) MONTHS from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181(a)." Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



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